1. The Policy Framework for Investment
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3. OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones

SUMMARY

1. The Policy Framework for Investment

http://www.oecd.org/document/61/0,3343,en_2649_34893_33696253_1_1_1_1,00.html

The Policy Framework for Investment (PFI) uses as a foundation the United Nations (UN) Monterrey Consensus of 2002, which places responsibility with governments for creating the right conditions for private investment to thrive. A Task Force of government officials from about 60 OECD and non-OECD economies with participation by the World Bank and other business, labor and non-governmental organizations created the PFI. The Task Force completed the PFI in April 2006, and it was endorsed by the OECD Council on May 11th, 2006. As part of the OECD's Initiative on Investment for Development, which also outlined a Policy Guidance for Donors, the PFI is a tool to be used by governments to best build an environment attractive to all investors and to enhance the development benefits of investment to society. Three principles apply throughout the PFI:

- **Policy coherence**—in order to best create an environment that facilitates investment, governments should take a cross-cutting, horizontal approach that combines several policy areas into a comprehensive program;
- **Transparency and accountability**—policies should facilitate public-private dialogue and be clearly and publicly explained. Accountability ensures that government agencies are exercising their powers responsibly;
- **Regular evaluation**—so that institutional frameworks remain as adaptable as possible, it is important to periodically evaluate the impact of existing and proposed policies so that challenges can be responded to quickly.

With these three overarching principles in mind, the PFI specifically covers ten policy areas, giving a list of questions under each theme to help governments assess whether their policies are apt to encourage investment. The ten policy areas included are:

1. *Investment policy*—transparency, property protection and non-discrimination are principles that help create a positive investment environment for all actors
2. *Investment promotion and facilitation*—these can be effective in attracting investment provided they endeavor to correct market failures and utilize the strong points of a country's investment environment
3. *Trade policy*—trade policies can help expand opportunities to obtain scale economies and facilitate integration into global supply chains
4. *Competition policy*—favors innovation, contributes to conditions favorable to new investment and helps pass on wider benefits of investment to society
5. *Tax policy*—well-designed tax policy benefits governments, which require tax revenue, and also supports a positive investment environment because it directly affects business costs and returns on investment

6. *Corporate governance*—the development of more sustainable sources of financing is ultimately dependent on the degree to which corporations observe basic principles of sound corporate governance
7. *Policies for promoting responsible business conduct*—these types of policies, such as those recommended in the OECD Guidelines for Multinational Enterprises, help attract investment that contributes to sustainable development
8. *Human resource development*—policies that build up and maintain a skilled, adaptable and healthy population support a favorable investment environment
9. *Infrastructure and financial sector development*—high-quality infrastructure policies ensure that limited resources are channeled to the most promising projects, while effective financial sector policies help enterprises and entrepreneurs realize their investment ideas in a stable environment
10. *Public governance*—regulatory quality and public sector integrity are two dimensions of public governance that can significantly affect the confidence and decisions of all investors and that can help obtain the development benefits of investment

2. OECD Guidelines for Multinational Enterprises

http://www.oecd.org/department/0,3355,en_2649_34889_1_1_1_1_1,00.html

On June 27th, 2000, the OECD Member states, as well as Argentina, Brazil, Chile and the Slovak Republic signed the Declaration on International Investment and Multinational Enterprises. In it, adhering governments recognize the contribution of multinational enterprises (MNEs) in international investment and the need to cooperate internationally through a balanced framework of inter-related instruments to help improve the positive contributions of MNEs to this international investment climate while minimizing difficulties. To do this, adherents agreed that, although they maintain the right to regulate the entry of foreign investment and establishment of foreign enterprises in their states, they would treat "Foreign-Controlled Enterprises" in accordance with international law and no less favorably than domestic enterprises. Adherents also developed the *Guidelines for Multinational Enterprises,* which they agreed to recommend to MNEs operating in or from their territories.

The *Guidelines* are voluntary principle and standards aimed at enterprises and are adapted to the evolving structures of MNEs, which are becoming more service and technology oriented. This structural evolution has also meant that although large enterprises still account for the majority of international investment, small- and medium-sized enterprises also play a key role in the international scene. Economic ties that join OECD countries with each other and to the rest of the world have been strengthened and deepened as foreign direct investment has increased, including that in developing countries, where MNEs have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services. The *Guidelines* are broken down into the following sections:

- **General Policies**—enterprises should fully take into account policies in the countries in which they operate and should also: a) help facilitate sustainable development while respecting human rights and encouraging local capacity building and human capital formation, b) support and uphold good governance principles and develop self-regulatory practices where necessary while keeping employees informed of all company policies and encouraging the adherence of business partners to these policies, and c) refrain from discriminatory action against employees who make *bona fide* reports on enterprise activities that contravene the law and from any improper involvement in local political activities;

- **Disclosure**—enterprises should use high quality standards to disclose timely, regular, reliable and relevant information regarding their activities, structure, financial situation and performance. Information to be disclosed includes: a)name, location and contact information of the enterprise, its parent enterprise and its main affiliates, b) the percentage of direct and indirect ownership in affiliates, c) the financial and operating results of the company, c) company objectives, d) major share ownership and voting rights, e) the names and remuneration of the members of the board and key executives, f) material foreseeable risk factors, g) material issues regarding employees and other stakeholders, and h) governance structures and policies;
- **Employment and Industrial Relations**—within the framework of applicable law and regulations, enterprises should: a) not discriminate against employees based on race, sex, religion, etc. and contribute to the elimination of child labor and all forms of forced labor, b)respect employees' right to be represented by trade unions and other *bona fide* representatives and provide information and facilities as necessary to the employee representatives, c) employ local personnel where possible, d) give sufficient notice in the case of lay-offs or other major events, and e) respect the right of employees and their representatives to negotiate and collectively bargain while not unfairly influencing or hindering these processes;
- **Environment**—enterprises should establish and maintain a system of environmental management based on assessments of the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle and provide education and training to employees in these matters;
- **Combating Bribery**—enterprises should not directly or indirectly offer, promise, give or demand bribes or other undue advantage to obtain or retain business or other improper advantage. To do this, transparency of transactions should be promoted, management control systems adopted, and employees made aware of company policies against bribery and extortion;
- **Consumer Interests**—all goods and services provided to consumers should meet all agreed or legally required standards on health and safety. Enterprises should not deliberately mislead consumers and should address any disputes in a fair and timely manner while respecting consumers' privacy;
- **Science and Technology**—enterprises' activities should be compatible with science and technology policies and plans of the countries in which they operate and should contribute to the broader transfer of, as well as the local development of, technologies and know-how, with due regard to the protection of intellectual property rights;
- **Competition**—enterprises should respect applicable laws and regulations regarding competition, and refrain from entering into the following anti-competitive agreements among competitors: a) fixing prices, b) making rigged bids, c) establishing output restrictions or quotas, or d) sharing or dividing markets by allocating customers, suppliers, territories or lines of commerce;
- **Taxation**—enterprises should contribute to the public finances of their host countries by paying in a timely manner applicable taxes.

Adherents countries to the *Guidelines* are expected to set up National Contact Points (NCPs) within their governments that serve to raise awareness of and promote the *Guidelines* while cooperating with the business community, employee organizations and other NCPs. NCPs are expected to meet annually to share experiences and report to the Investment Committee (responsible for the effective functioning of the *Guidelines*).

OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones
http://www.oecd.org/document/26/0,3343,en_2649_34889_36899994_1_1_1_1,00.html

The *Risk Awareness Tool* was created as part of the OECD Investment Committee's follow up to the OECD *Guidelines for Multinational Enterprises.* The committee received inputs from business, trade unions and civil society representatives from both OECD and non-OECD areas for the development of the *Risk Awareness Tool*, which was adopted on June 8th, 2006. Weak governance zones are defined as investment environments in which governments are unable or unwilling to assume their roles in protecting rights (including property rights), providing basic services (*e.g.* social programs, infrastructure development and law enforcement) and ensuring that public sector management is efficient and effective. While the *Tool* is based on the premise that sustainable development and poverty reduction will need to be driven by the leadership and the people of the countries concerned, it recognizes that companies play supporting roles in sustainable reform and that government responsibility goes hand-in-hand with corporate responsibility.

The principal challenges for companies operating and/or investing in weak governance zones lie in the "heightened risks" encountered in these zones (*e.g.* in relation to corruption, human rights abuses and violations of international law), which create a need for "heightened care" in ensuring compliance with laws and observation of relevant international instruments. In order to help companies better understand weak governance zones and the "heightened care" required, the *Tool* proposes a list of questions under each of the following topics that companies might ask themselves when considering actual or prospective investment in these zones:

- **Obeying the law and observing international instruments**—because legal systems and political dialogue in weak governance zones do not work well, international instruments that provide guidance on acceptable behaviors are particularly useful. Some areas of consideration include:
  - *General*—is the company confident that it will be able to put in place business policies and processes that will allow it to obey applicable laws and observe relevant international instruments while avoiding aggravating any existing problems?
  - *Human rights and management of security forces*—Companies should assess the host country's ability and willingness to respect human rights and conduct business without impairing others' enjoyment of human rights. When private security forces are necessary to protect employees and physical assets are these forces being used in accordance with international humanitarian law?
  - *Combating corruption and money laundering*—is the company respecting policies and international standards where applicable to fight corruption and money laundering?

- **Heightened managerial care**—greater care is required in weak governance zones in order to ensure compliance with legal obligations and observation of international standards. Areas of consideration are:
  - *Policies*—are the concepts and principles of relevant international instruments, including the *OECD Guidelines,* embedded in the company's business culture and policies, and is the company promoting these concepts and principles amongst its business partners where possible?
  - *Management systems*—Employee management practices should create incentives for employee compliance with the law and relevant international instruments while making sure that employees are confident that they will not be disciplined for such compliance.

- *Reporting and disclosure of information*—in addition to regular high quality disclosure practices, is the company using heightened care a) to ensure its financial statements are subject to adequate independent external audits and b) in disclosing sensitive transactions?

- **Political activities**—often companies find it necessary to develop political alliances with high level governmental and political figures in weak governance zones in order to protect their investments from heightened threats. Some considerations to ensure heightened care in such situations include:
  - *Involvement in local politics*—what steps can the company make to ensure a) avoidance of improper involvement in local political activities, b) that it does not make illegal contributions to political candidates or organizations and that contributions that it does make do not aid and abet criminal activities or exacerbate conflict? Companies should take steps to transparently manage relations with high level governmental and political figures.
  - *Dealing with public officials with conflicts of interest*—how is the company identifying and managing situations of conflict of interest with public officials with whom it has relations?

- **Knowing clients and business partners**—there is an increased risk of entering into relationships with employees, clients or business partners that might damage business reputations or result in violations of law or other abuses, such as of human rights. Is the company using heightened care to inform itself about the possible roles of people with whom it has relations in host country criminality, corruption and violent conflict, and through this heightened care to inform itself, is it avoiding facilitating these activities?

- **Speaking out about wrongdoing**—because speaking out or sharing information of wrongdoing can be especially risky in weak governance zones, it is necessary to consider the costs, benefits and risks for all involved, including company's owners, employees and other stakeholders.

- **Business roles in weak governance societies (a broadened view of self-interest)**—because direct and opportunity costs of "government failures", individual companies and the business sector as a whole might find it in their broad self-interest to help societies in weak governance zones to get on the path of institutional reform. Although the extent of the involvement of companies was disputed by participants in developing the *Tool*, all generally agreed that partnerships are important. These partnerships can include only host country businesses and professional associations, trade unions and civil society organizations, or also involve international organizations and home governments.

This summary was written by the SWAC. It will be revised after the meeting. Please send any comments or corrections to: marie.tremolieres@oecd.org